Supreme Court, U.S.
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RECORD NO. 90-1570

IN THE

Supreme Court of the United States

October Term, 1990

ELTON EUGENE GUNTER,

Petitioner,

v.

VIRGINIA STATE BAR, ex rel, THE SEVENTH DISTRICT COMMITTEE and BILLY J. TISINGER, ESQUIRE,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

REPLY OF PETITIONER TO BRIEF IN OPPPOSITION

IRVING ANOLIK,
a member of the Bar of this Court
Attorney for the Petitioner
225 Broadway, Suite 1915
New York, New York 10007-3082
(212) 732-3050

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PETITIONER'S REPLY TO RESPONDENTS' BRIEF

Petitioner submits this Reply to the Opposition Brief of the Respondents.

1. The Brief in Opposition of the Respondents, in essence, concedes that the rights of the Petitioner were violated with regard to equal protection of the law and due process of law.

2. At page 2 of the Opposition Brief, the Respondents state inter alia:

> "Further, review of this case on certiorari is not warranted because the facts are unique and unlikely to recur."

3. This statement is consistent with the concession given to Petitioner's counsel by a representative of Respondents that this case has no equal in the annals of disciplinary proceedings before the Virginia State Bar. By describing this

case as "unique" and "unlikely to recur", it is obvious that the Respondents are conceding that there is no parallel situation where any other lawyer who was subject to disciplinary proceedings was deprived of a hearing before a district committee.

4. The Respondents seem to equate the hearing before the Circuit Court as the same which would have been granted before the Seventh District Committee. Such, of course, is not correct, since the Circuit Court proceedings are public, whereas as the Seventh District Committee proceedings would have been confidential and private, and the persons hearing it would not have been Circuit Court Judges, but, rather, members of the Seventh District Committee.

5. The Respondents make the

incredible assertion that because of the fact that Billy J. Tisinger, Esquire, a member of the Virginia State Bar Disciplinary Board was the Complainant, that it would look inappropriate for the Seventh District Committee to grant a hearing even if Mr. Tisinger had recused himself if the matter was ultimately certified to the Disciplinary Board by the District Committee. This Court can take judicial notice of the fact that frequently Justices of this Court recuse themselves in particular matters, and that is true of virtually every tribunal in the country. The recusal of Mr. Tisinger would in no way have impacted upon the right or duty of the Seventh District Committee to grant a hearing. As a matter of fact, it was the only fair and proper thing to do, consistent with the Fourteenth Amendment

of the United States Constitution.

6. With respect to discovery, while it is true that in normal cases a member of the bar who is subject to discipline is not afforded discovery, the unusual circumstances of this case warranted discovery due to the fact that, after about two years of unexplained delay, the Seventh District Committee suddenly decided that it would not grant a hearing to the Petitioner. No reason was advanced, and, in order to proceed intelligently and properly before the Circuit Court, Petitioner was entitled to discovery as to why he was deprived of his hearing before the Seventh District Committee and for the other pertinent and critical information he was seeking.

76. Petitioner maintains that the Virginia State Bar cannot discriminate

against one of its members with respect to its proceedings before a district committee or the Disciplinary Board by referring the matter to a Circuit Court, which effectively eliminates one hearing to which the attorney is entitled by the Rules of the Supreme Court of Virginia and constitutionally.

8. The Respondents have not contested the fact that they can find no other case where a member of the bar was deprived of a proceeding before a district committee. We submit that this ipso facto was a violation of Petitioner's equal protection and due process rights under the Fourteenth Amendment to the United States Constitution.

9. The disparate treatment has no rational basis herein, since the absurd reason for denying the hearing, according

to the Respondents, was that Mr. Tisinger was a member of the Disciplinary Board (not the District Committee) and as such the entire Committee was automatically recused from granting a hearing, albeit after a two-year unexplained hiatus.

10. If the reasoning of the Respondents is correct; then, if any Justice of this Court finds it necessary to recuse herself or himself, the entire Court would be barred from hearing the case. That would be true of every tribunal one can imagine. It is obvious that the mere statement of this premise is enough to expose its fatuous reasoning.

11. The citation by the Respondents of Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471 (1977), is puzzling since that case dealt with an Ohio statute which prohibited workers from collecting

unemployment benefits when the unemployment stemmed from labor disputes, other than lockouts, at factories owned or operated by employers by which the worker was last employed. We can see no logical reason why that case is controlling herein. If it had any relevance at all, it would seem that the Petitioner was "locked-out" of his hearing before the District Committee.

12. In the case of Regents of University of Cal. v. Bakke, 98 S.Ct. 2733, 57 L.Ed.2d 750, an illogical and irrational type of discrimination applied to one member of a group was struck down as contrary to the equal protection clause of the United States Constitution.

13. At page 6 of their brief, the Respondents again state that they acted "rationally" by filing a disciplinary case

against the Petitioner in the Circuit Court, rather than before the Disciplinary Board, because a member of the Board made the complaint. There is no rationality to this decision since every other attorney who is subject to discipline is granted a hearing before a district committee and his choice of a second hearing before the Disciplinary Board or a Circuit Court, if such committee confirms the charge(s).

14. In Quinn v. Millsap, 109 S.Ct. 2324, 105 L.Ed.2d 74 (1989), this Court ruled that irrational and invidious discrimination violates the equal protection clause of the United States Constitution.

15. In its brief, page 7, by citing Weatherford v. Bursey, 429 U.S. 545, 559 (1977), the Respondents are in effect conceding that the instant proceeding is

a "criminal case".

16. We, on behalf of Petitioner, have maintained that this is a quasi-criminal case, and consequently the full panoply of due process rights in such a case should be granted to the Petitioner, which includes the type of discovery requested herein due to the fact that the Seventh District Committee inexplicably, after a two-year hiatus, suddenly referred the matter to the Winchester Circuit Court without any logical reason whatsoever.

17. Finally, we submit that by depriving the Petitioner of hearings with respect to certain aspects of the disciplinary proceedings, such as his Motion for Discovery and his objections to bypassing the Seventh District Committee, Petitioner was deprived, to some extent, of the effective assistance of the lawyers

he had hired. Unless they could appear and argue for him, they could not properly acquit themselves in the manner in which a client is entitled. Such is a violation of the Sixth Amendment of the United States Constitution which is made applicable to the states in the Fourteenth Amendment, and consequently, this too, is a basis for the constitutional violations which are alleged by Petitioner herein.

CONCLUSION

The opposition of Respondents is not based upon cogent or logical reasoning; therefore, in essence, they are not contesting the essential bases of the Petitioner in his allegations of having been deprived of equal protection of the law and due process of the law. Accordingly, the Petition for Certiorari should be granted.

Respectfully submitted.

Irving Anolik By MKH

IRVING ANOLIK
Attorney for Petitioner
225 Broadway, Suite 1915
New York, New York 10007
(212) 732-3050